IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

PETITION NO.26 OF 2004

Re: M/s.Vallabhadas Liladhar & Co. & anr.

..Debtors.

Ex-parte:

M/s.R.J.Anantharajaiah & Sons..Petitioning Creditor

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Mr.Salunke i/b M/s.S.Ashwinikumar & Co. for the Petitioning Creditor.

Mr.Carl Shroff i/b M/s.M.S.Bodhanwala & Co. for Debtor No.6.

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CORAM : DR.D.Y.CHANDRACHUD, J.

15th February, 2005.

P.C. :

This Petition was instituted on 10th February, 2004. On 3rd August, 2004, 7th December, 2004, 21st December, 2004 and 1st February, 2005 the hearing of the Insolvency Petition was adjourned. On 21st December, 2004 F.I. Rebello, J. directed that the matter was being adjourned as and by way of a last opportunity to 18th January,

2005. It was made clear that no further adjournment would be granted and that if any affidavit is filed that would have to be served on the Petitioning Creditor on or before 12th January, 2005 failing which it would not be considered. Again on 1st February, 2005 the matter was adjourned to 15th February, 2005 and it was clarified that there would be no further adjournment.

The Insolvency Petition is based upon a decree passed on 19th November, 2002 by the Principal Civil Judge, Senior Division and C.J.M. Tumkur in Original Suit 15 of 1995. The suit has been decreed for a sum of Rs.4,24,284/- with interest at the rate of 12% per annum from 19th December, 1994 till realization. An affidavit in reply has been filed by Debtor No.6 who is original Defendant No.6 to the suit. Defendant No.6 filed a written statement in the suit, but thereafter did not appear in the proceedings. The only defence which is urged in these proceedings is that the insolvency notice was not served. I have perused the affidavit of service. The affidavit of service is to the effect that the communication is

transmitted by RPAD at the residential premises as well as the business address of Debtor No.6 and was returned unclaimed. Though it is now sought to be urged that the postal envelope bears the address of the 4th floor of the premises and that the aforesaid debtor resides on the 3rd floor, there is no dispute about the fact that the communication which was addressed to the business address was in any event sent to the correct address. That apart, service was also effected by substituted service. Debtor No.6 had appeared in these proceedings and it is evident that he was aware of these proceedings at all material times. Since November, 2002 over two years had elapsed since the decree of the learned Trial Judge at Tumkur. Admittedly, no application has been filed till date for setting aside the ex parte decree which holds the field. The Insolvency Petition is therefore required to be made absolute and is accordingly made absolute in terms of prayer clause (a).